

## Judges or Politicians?

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I would dare say there is no other country on the face of this Earth with a more efficient and better organized judicial system than the one in the United States, which consists of a federal judiciary and a state judiciary, including Puerto Rico's.

Notwithstanding, I have observed the difficulty in accepting this premise expressed by some foreign members of the bar and bench when visiting us, seeking our advice and as we discuss with them the judicial branch and, hence, the power of a federal judge. Some, including critics in our own country, see us as political functionaries, but when they go into an in-depth analysis and look at the principles of our judiciary, they realize there is nothing odd or unusual about judges as jurists, and not as political creatures, intervening in public affairs through the performance of their duties. This is an intervention that takes place on a daily basis, not by coincidence, but because it is a judicial duty.

One characteristic of our judicial system is being able to exercise the judicial prerogative of arbitrating a controversy. In order to resolve a legal dispute, certain rights must be challenged and others must be defended. This is done through litigation, with one side claiming a right and the other raising a defense based on different legal interpretations. When the judge intervenes in the dispute, a judicial machinery is engaged that cannot change the facts, but must clarify or decide the applicable law. That is the reason why judges do not stand on street corners to preach about the law. We need a case, a controversy, that allows us to render a decision.

There is another characteristic of the judicial branch that is closely related to the duty of deciding only those cases and controversies that come before the court. We decide only what is necessary, what is specific, what is key to bring the controversy to an orderly resolution. We should not get involved, and we generally do not get involved, in general or irrelevant matters. If a decision requires a rebuttal of, or a change in a judicial principle or rule, and we do that within the framework of the controversy before us, that's fine and dandy. But if we digress into other principles outside the scope of the case, we then depart from the judicial function we swore at one point to exercise wisely and correctly.

A third characteristic of the judicial system is that we play a reactive, not a proactive role. As judges, we cannot go out seeking controversies. We wait for others — the litigants — to enter into a controversy and only then, when the problem is brought before us for our consideration, do we intervene and make a ruling according to the facts and the law.

Our judicial system retains these three characteristics. A judge may only render a decision when a controversy has arisen. The judge directs his or her efforts towards a particular case and does not act until the case or the controversy has matured or is ready for a decision.

The position of state and federal judges, therefore, is very similar, but the logical consequence of the type of cases heard and the relationship the cases may have to the political world is to place a tremendous political power in the judges' hands. This is why, in our federal judicial system, and based on legal principles, most cases delegate in us the obligation to base our decisions on the Constitution and not necessarily on laws approved by the U.S. Congress or the state legislature. In other words, we judges have the freedom not to apply laws that may turn out to be unconstitutional. Under our system of government, the Constitution is above the Legislative Branch and has a higher rank in citizens' claims. This is an essential condition of the Judicial Branch, as the constitutional mandate strictly binds the actions of judges when deciding many controversies.

We ask ourselves, then, is this an absolute power that the judiciary has? Are there limits and controls to correct human and legal errors made by the judges? Of course there are. Whereas it is true that the judicial branch has considerable and enormous power, the control is found within the system itself, since justice can be done only through the trial courts and the appellate courts. The judge does not act privately, or under the table.

Judges act through the system — given certain allegations and evidence — in this or that decision, which can be accepted by the parties or reviewed by a higher court.

Keep in mind that judges do not have decisional power based on generalities or personal whims. There are always parties with rights subject to review at a higher level and, above all, there is a guarantee and transparency in the public process, with an absolute right to seek a different remedy in a higher court. These considerations lead me to conclude that our judicial system is the best on the face of this Earth, the most favorable to individual liberties and public order. Above all, remember that we, the judges, do not get whimsically involved in the political arena. Political issues that may arise during litigation are brought to our consideration because the parties raise the issue, and because it is necessary to handle the political issues in order to adequately rule on the case. Finally, keep in mind that judges do not abdicate their responsibility because of what others may think, even when we may be accused of being politically swayed.

I firmly believe that the judicial branch I have tried to describe in such a short space is not one of the most powerful, but the most powerful barrier designed by some very wise men to confront the tyranny that, unfortunately, shows its face from time to time among the purely political hoards.

Let's think about this and thank God for living within a great legal system. These are the reasons why the flow of foreign judicial officers visiting our courts is unstoppable. They are looking for the best in order to reconstruct the judicial systems in their own countries. Let us respect the courts and their judges, not out of consideration to the mere mortals who sit on the judge's bench, but because of what the judicial branch means in our daily lives. The court is the only forum where controversies among citizens are finally resolved in a civilized fashion.